

PAUL N. TEMPLE

IBLA 77-424

Decided December 16, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, canceling in part oil and gas lease U-36429.

Affirmed.

1. Oil and Gas Leases: Cancellation

The Secretary of the Interior generally has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates.

2. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Rentals: Payments: Generally -- Payments: Refunds

Where an oil and gas lease is cancelled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

APPEARANCES: Paul N. Temple, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Paul N. Temple had his simultaneously filed oil and gas lease drawing entry card first drawn for parcel UT 151 in the Utah Federal oil and gas lease simultaneous drawing for December 1976.

On April 20, 1977, oil and gas lease U-36429 was issued to Temple with an effective date of May 1, 1977. The lease embraced 1,878.20 acres in Garfield County, Utah, within the Dixie National Forest.

In April 1977, Temple agreed to assign to Burlington Northern, Inc., that part of U-36429 consisting of 1,278.20 acres located in sections 16, 21, 22, 27 and 28, T. 35 S., R. 2 W., SLM, Utah. Burlington was to pay Temple \$ 10 per net acre plus a 3 percent overriding royalty for the acreage.

By decision dated May 19, 1977, the Utah State Office, Bureau of Land Management (BLM), canceled U-36429 in part. The decision stated:

It has come to the attention of this office that the lands in this lease in Secs. 16, 21, 22, 27 and 28, T. 35 S., R. 2 W., are within prior lease U-29468 which is in good standing. Accordingly, said lands were erroneously listed in December 1976, as available for new offers to lease; and, oil and gas lease U-36429 is hereby canceled to that extent. The lands remaining in the lease total 600 acres and are described as follows:

T. 35 S., R. 2 W., SLM, Utah Sec. 32,  
N 1/2, SW 1/4 N 1/2 SE 1/4,  
SW 1/4 SE 1/4.

The annual rental will be \$ 600. When this decision becomes final, a refund of \$ 1,279 will be authorized.

Appellant does not contest the validity of U-29468; 1/ rather he states that BLM was negligent in listing the lands as available for leasing and that such negligence caused him to lose \$ 12,782 plus the reasonable value of a 3 percent overriding royalty on the canceled portion of the lease. Appellant asserts that for that reason the United States Government is "both morally and legally obligated to compensate him \* \* \*."

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1/ While the case record contains no explanation by BLM of why the lands in U-29468 were listed in the December 1976 drawing, appellant does not dispute the validity of U-29468. In his statement of reasons for appeal he states that the subject lands "were evidently already subject to a valid lease." He continued by stating that he understood "that this error was due to the fact that a receipt for rentals paid by the prior lessee Tenneco Oil Company, was negligently misfiled by the BLM in Utah."

[1] It is clear that the Secretary of the Interior generally has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); David A. Provinse, 27 IBLA 376 (1976); William T. Alexander, 21 IBLA 56 (1975); W. H. Bird, 72 I.D. 287 (1965). The fact that appellant entered into an agreement with Burlington Northern concerning those lands which had erroneously been included in U-36429 cannot serve as a basis for a claim that the Government should reimburse appellant for his alleged loss. Such lands were not available for leasing; therefore, the lease was void as to those lands. We find no authority nor has appellant cited any authority for granting the relief which he seeks for his unrealized anticipated profits.

Appellant also requests that the remaining portion of U-36429 lying within section 32 be canceled. Appellant stated that that portion of U-36429 lies completely on a syncline and is of little value or interest when divorced from the canceled portion of the lease. Appellant asserts that under no circumstances would he have filed an offer for the 600 acres in section 32 if it had not been included with the canceled portion of the lease. Appellant states that at the time the lease issued both parties assumed the lease consisted of certain lands in sections 16, 21, 22, 27, 28 and 32. When BLM discovered its error and canceled the portion of U-36429 lying in sections 16, 21, 22, 27 and 29, only the lands in section 32 remained. For that reason, appellant feels he should not be compelled to retain the remainder of U-36429 and be charged \$ 600 for the first year's rental.

The drawing card executed by appellant resulting in lease U 36429 recites in applicable portion as follows: "Undersigned offers to lease for oil and gas all or any portion of the identified parcel of land which may be available for noncompetitive leasing, \* \* \*." [Emphasis supplied.]

It is crystal clear that appellant had agreed to accept any portion of the lands in parcel UT 151 "which may be available for noncompetitive leasing" and cannot complain now. Volenti non fit injuria.  
2/ No relief therefore may be afforded him looking to the return of the \$ 600 rental.

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2/ To the willing no harm is done.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joan B. Thompson  
Administrative Judge

